

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

METABANK dba META PAYMENT
SYSTEMS,

Plaintiff,

vs.

CONDUENT BUSINESS SERVICES, LLC
F/K/A XEROX BUSINESS SERVICES, LLC,

Defendant.

CIV. 19-4138

COMPLAINT

Plaintiff MetaBank dba Meta Payment Systems (“MetaBank”) states as its Complaint against Defendant Conduent Business Services, LLC f/k/a Xerox Business Services, LLC (“XBS”), the following:

PARTIES, JURISDICTION, AND VENUE

1. MetaBank is a federally chartered savings bank with its principal place of business in Sioux Falls in the Southern Division of the District of South Dakota.
2. XBS is a Delaware limited liability company with offices in Kentucky.
3. The parties are diverse (citizens of different states) and the matter in controversy in this civil action exceeds \$75,000.00.
4. This Court has jurisdiction over this civil action under 28 U.S.C. § 1332(a).
5. Venue in this Court is proper under 28 U.S.C. § 1391, because, among other reasons, MetaBank performed its contractual obligations in South Dakota.

THE SERVICING AGREEMENT

6. XBS wholly owns Xerox Card Services, LLC (“Servicer”).

7. MetaBank and Servicer entered the Servicing Agreement dated April 7, 2016 (“the Servicing Agreement”).

8. Under the Servicing Agreement, MetaBank agreed to act as the issuing bank for prepaid card programs managed, marketed, promoted, and serviced by Servicer, which issuing bank role included establishing systems to launch and run the prepaid card programs.

9. Under the Servicing Agreement, Servicer owes monthly fees to MetaBank for the duration of the Servicing Agreement, which monthly fees are dependent upon prepaid card transaction volumes, but with minimum monthly fees ranging from \$50,000.00 to \$100,000.00 per month under Section II(G) of Schedule A of the Servicing Agreement.

10. MetaBank performed its contractual obligations, but Servicer made a business decision not to launch the prepaid card programs.

11. Following Servicer’s decision to abandon the prepaid card programs, Servicer paid MetaBank the related a minimum monthly fee each month through and including February of 2019.

12. Despite demand for payment, Servicer has failed to pay MetaBank the related minimum monthly fees under the Servicing Agreement from March 2019 through the present, which constitutes a breach of the Servicing Agreement.

13. Servicer has unequivocally stated it will not pay any additional minimum monthly fees to MetaBank, which constitutes an anticipatory breach or actual breach of the Servicing Agreement with respect to the remaining duration of the Servicing Agreement and Servicer’s remaining obligations to pay minimum monthly fees through that entire duration.

14. Including the past due minimum monthly fees from March 2019 through the present and the remaining minimum monthly fees for the duration of the Servicing Agreement, Servicer owes MetaBank \$3,900,000.00.

15. Servicer's failure to pay MetaBank \$3,900,000.00, including the portion from past due minimum monthly fees and the portion for remaining minimum monthly fees, constitutes a breach of the Agreement.

THE GUARANTY

16. On April 7, 2016, the same date Servicer and MetaBank executed the Servicing Agreement, MetaBank and XBS entered into the Parent Guaranty ("the Guaranty").

17. Under the Guaranty, XBS unconditionally and irrevocably guaranteed Servicer's performance of all of its obligations under the Servicing Agreement.

18. Paragraph 1 of the Guaranty states in relevant part as follows: "This Guaranty is irrevocable, unconditional and absolute, and if for any reason any such payments are not paid or such obligations are not performed, as the case may be, by Servicer when due, then, Guarantor will pay or perform the same or cause the same promptly to be performed."

19. Paragraph 4 of the Guaranty states in relevant part as follows: "[MetaBank] need not take any action against the Servicer, any other guarantor, or any other person, firm or corporation or resort to any security held by it at any time before proceeding against [XBS]."

20. No later than July 1, 2019, MetaBank provided notice to Servicer and XBS of Servicer's breach of the Servicing Agreement, specifically, Servicer's failure to pay the accrued and unpaid minimum monthly fees as described in this Complaint.

21. No later than July 1, 2019, MetaBank provided notice to XBS that MetaBank intended to pursue remedies against XBS under the Guaranty in the event Servicer remained in breach of its payment obligations under the Servicing Agreement.

22. To date, Servicer and XBS have failed to pay MetaBank the minimum monthly fees from March 2019 through the present, which constitutes a breach of the Servicing Agreement and Guaranty for which XBS is liable under the Guaranty.

23. XBS has unequivocally stated neither it nor Servicer will pay any additional minimum monthly fees to MetaBank, which constitutes an anticipatory breach or actual breach of the Servicing Agreement and Guaranty for which XBS is liable under the Guaranty.

24. Including the past due minimum monthly fees from March 2019 through the present and the remaining minimum monthly fees for the duration of the Servicing Agreement, XBS owes MetaBank \$3,900,000.00 under the Guaranty.

25. XBS's failure to pay MetaBank \$3,900,000.00, including the portion from past due minimum monthly fees and the portion for remaining minimum monthly fees for the duration of the Servicing Agreement, constitutes a breach of the Guaranty.

COUNT I: BREACH OF CONTRACT

26. As set forth in this Complaint, XBS is in breach of the Guaranty and its derivative obligations under the Servicing Agreement due to its execution of the Guaranty, therefore, XBS is liable to MetaBank for its breach due to the following: (a) XBS's failure to pay to MetaBank the monthly minimum fees for March 2019 through the present; (b) XBS's unequivocal statement that neither it nor Servicer will pay any additional minimum monthly fees to MetaBank; and (c) failing to perform its obligations of guaranteeing Servicer's performance of its obligations under the Servicing Agreement, including Servicer's payment obligations.

27. XBS's breach has caused damages to MetaBank in an amount to be proven at trial, but for no less than \$3,900,000.00.

28. Due to XBS's breach of contract, MetaBank is entitled to a judgment in an amount to be proven at trial, but for no less than \$3,900,000.00.

COUNT II: DECLARATORY JUDGMENT

29. Under 28 U.S.C. § 2201(a) and SDCL chapter 21-24, MetaBank is entitled to a declaration that any actual or attempted termination of the Servicing Agreement does not relieve XBS of its obligation under the Guaranty to pay to MetaBank all minimum monthly fees owed through the duration of the Servicing Agreement which total \$3,900,000.00.

WHEREFORE, MetaBank prays for the following relief:

- A. For the relief requested in this Complaint, including a judgment against XBS in an amount to be proven at trial, but for no less than \$3,900,000;
- B. For prejudgment and post-judgment interest at the maximum rate allowed by law;
- C. For recovery of costs, disbursements, expenses, and attorney's fees; and
- D. For other relief that the court finds just, lawful, fair, reasonable, or equitable.

Dated at Sioux Falls, South Dakota, this 9th day of August, 2019.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.

/s/ *Mitchell A. Peterson*

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Sioux Falls, SD 57101-1030
Telephone: (605) 336-2880
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Attorneys for Plaintiff

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MetaBank dba Meta Payment Systems

(b) County of Residence of First Listed Plaintiff Minnehaha

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Mitchell A. Peterson - Davenport, Evans, Hurwitz & Smith, LLP
206 West 14th Street - P. O. Box 1030
Sioux Falls, SD 57101-1030

DEFENDANTS

Conduent Business Services, LLC f/k/a Xerox Business Services, LLC

County of Residence of First Listed Defendant New Castle

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332(a)

Brief description of cause:

Breach of Contract Action**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

08/09/2019

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE